

LATHAM & WATKINS LLP
Stephen P. Swinton (Bar No. 106398)
steve.swinton@lw.com
Adam A. Welland (Bar No. 228680)
adam.welland@lw.com
12636 High Bluff Drive, Suite 400
San Diego, California 92130-2071
Telephone: (858) 523-5400
Facsimile: (858) 523-5450

Attorneys for Plaintiff,
GEORGIA-PACIFIC CONSUMER PRODUCTS LP

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GEORGIA-PACIFIC CONSUMER
PRODUCTS LP, a Delaware limited
partnership,

Plaintiff,

v.

LEE'S GENERAL TOYS, INC., a California
corporation, JOHN LEE, an individual; and
DOES 1-100,

Defendants.

CIVIL ACTION NO. 07-CV-02391 JAH POR

**DECLARATION OF ADAM A. WELLAND
IN SUPPORT OF PLAINTIFF GEORGIA-
PACIFIC'S *EX PARTE* APPLICATION
FOR EXPEDITED DISCOVERY**

1 I, Adam A. Welland, hereby declare as follows:

2 1. I am an attorney with Latham & Watkins LLP, counsel for Georgia-Pacific
3 Consumer Products LP ("Georgia-Pacific"). I am licensed to practice law in the State of
4 California and admitted before this Court. I submit this declaration in support of Plaintiff
5 Georgia-Pacific's *Ex Parte* Application for Expedited Discovery, filed concurrently herewith.

6 2. The facts set forth herein are within my personal knowledge, to which I could and
7 would testify competently if called upon to do so.

8 3. Pursuant to Local Rule Local Rule 83.3(h)(2)(1), on January 31, 2008 at
9 approximately 11:35 a.m., I called opposing counsel, Mr. Ronald Martinetti to notify him that
10 Georgia-Pacific would file this *ex parte* application on either that day or the February 1, 2008 in
11 this Court. According to Mr. Martinetti, Defendants intend to oppose this *ex parte* application.

12 4. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of
13 Andrew Towle (without the previously filed exhibits) in Support of Plaintiff Georgia-Pacific
14 Consumer Products LP's *Ex Parte* Application for Temporary Restraining Order, or in the
15 Alternative, Order to Show Cause, filed December 20, 2007.

16 5. Attached hereto as Exhibit 2 is a true and correct copy of the federal trademark
17 registration certificate for U.S. Reg. No. 781,414.

18 6. Attached hereto as Exhibit 3 is a true and correct copy of the federal trademark
19 registration certificate for U.S. Reg. No. 1,172,215.

20 7. Attached hereto as Exhibit 4 is a true and correct copy of the federal trademark
21 registration certificate for U.S. Reg. No. 2,512,417.

22 8. Georgia-Pacific has contacted Defendants on numerous occasions to request
23 Defendants' cooperation through disclosure of the source or sources from which Defendants
24 have received the offending products, the retail establishments or other customers to whom
25 Defendants have distributed these products, information relating to any pending or issue
26 "Angelite" trademarks, and financial records documenting the full extent of Defendants'
27 infringing activities. Indeed, in Georgia-Pacific's initial communications with Defendants,
28 Georgia-Pacific made clear its request for full disclosure of details regarding the distribution

1 networks for “Angelite” products. While Defendants took some steps to respond to Georgia-
2 Pacific’s request, by letter dated December 31, 2007, Defendants’ initial disclosure contained
3 only the manufacturer and agent in China as well as minimal financial information without any
4 supporting documentation, which was then contradicted by a later disclosure.

5 9. Accordingly, Georgia-Pacific, through counsel, continued to request Defendants’
6 full cooperation in disclosures regarding the sources of the offending “Angelite” products, the
7 Defendants’ own distribution network, and related financial information. Attached hereto as
8 Exhibit 5 is a letter sent to counsel for Defendants, Mr. Ronald Martinetti, listing the information
9 sought by Georgia-Pacific, dated January 15, 2008.

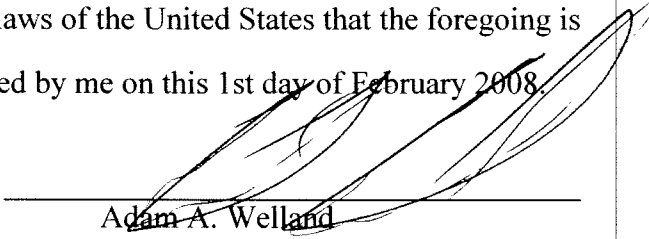
10 10. Attached hereto as Exhibit 6 is a letter I sent to counsel for Defendants,
11 Mr. Ronald Martinetti, dated January 22, 2008, again requesting Mr. Martinetti’s cooperation in
12 disclosing the requested information.

13 11. Attached hereto as Exhibit 7 is a follow-up letter I sent to Mr. Martinetti again
14 reciting the information sought by Georgia-Pacific, dated January 28, 2008.

15 12. To date, Defendants have failed to adequately provide the disclosures requested
16 by Georgia-Pacific. While Defendants have provided some additional information pursuant to
17 Georgia-Pacific’s requests, these disclosures—which are contained in a single-page letter dated
18 January 25, 2008 and unsupported by any documentation—are extremely minimal and inherently
19 suspect. For instance, Defendants possess a California trademark registration for the mark
20 “Angelite,” which they claim to have held since 2003, yet they claim to have imported no more
21 than six containers—in total—of bathroom tissue carrying this mark, amounting to less than
22 \$40,000 worth of goods. Given that Defendants have obtained a California state trademark
23 registration in 2003, sought and abandoned a federal trademark in 2003 – 2004, and are currently
24 seeking a federal trademark registration for this mark, Defendants’ assertion that that only six
25 containers have been imported is suspect. The costs associated with these trademark
26 applications, including the need to hire an attorney, as well as the fact that such applications were
27 filed almost five years ago suggest that distribution and sale of “Angelite” products may be far
28 more extensive and profitable than Defendants contend.

1 13. Defendants also have repeatedly refused to enter a stipulated preliminary
2 injunction prohibiting them from distributing and/or selling warehoused or future shipments of
3 “Angelite” products, despite Defendants’ expressed willingness to discontinue these activities.
4 Defendants’ refusal to agree to a stipulated preliminary injunction has further aroused Georgia-
5 Pacific’s suspicions and heightens Georgia-Pacific’s need to conduct limited, expedited
6 discovery.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is
8 true and correct and that this declaration was executed by me on this 1st day of February 2008.

9
10 
11 Adam A. Welland
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBITS

EXHIBIT 1: Declaration of Andrew Towle (without the previously filed exhibits).

EXHIBIT 2: Copy of Registration Certificate for U.S. Reg. No. 781,414.

EXHIBIT 3: Copy of Registration Certificate for U.S. Reg. No. 1,172,215.

EXHIBIT 4: Copy of Registration Certificate for U.S. Reg. No. 2,512,417.

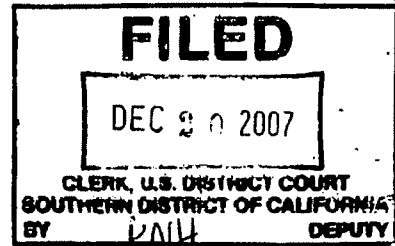
EXHIBIT 5: Letter to Mr. Ronald Martinetti, dated January 15, 2008.

EXHIBIT 6: Letter to Mr. Ronald Martinetti, dated January 22, 2008.

EXHIBIT 7: Letter to Mr. Ronald Martinetti, dated January 28, 2008.

EXHIBIT 1

1 LATHAM & WATKINS LLP
 2 Stephen P. Swinton (Bar No. 106398)
 3 steve.swinton@lw.com
 4 Adam A. Welland (Bar No. 228680)
 5 adam.welland@lw.com
 12636 High Bluff Drive, Suite 400
 San Diego, California 92130-2071
 Telephone: (858) 523-5400
 Facsimile: (858) 523-5450



6 Attorneys for Plaintiff,
 7 GEORGIA-PACIFIC CONSUMER PRODUCTS LP

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 GEORGIA-PACIFIC CONSUMER
 11 PRODUCTS LP, a Delaware limited
 partnership,

12 Plaintiff,

13 v.

14 LEE'S GENERAL TOYS, INC., a
 15 California corporation, JOHN LEE, an
 individual; and
 16 DOES 1-100,

17 Defendants.

Civil Action No.

07 CV 2391 BTM AJB

DECLARATION OF ANDREW TOWLE
 IN SUPPORT OF PLAINTIFF
 GEORGIA-PACIFIC CONSUMER
 PRODUCTS' *EX PARTE* APPLICATION
 FOR A TEMPORARY RESTRAINING
 ORDER AND ORDER TO SHOW
 CAUSE RE PRELIMINARY
 INJUNCTION

DATE: TBD
 TIME: TBD
 CTRM: TBD

1 I, Andrew Towle, hereby declare as follows:

2 1. I am the Vice-President and General Manager of the Retail Tissue Business for
3 Georgia-Pacific Consumer Products LP ("Georgia-Pacific"). I have personal knowledge of the
4 matters set forth herein, and if I am called upon to testify, I could and would testify competently
5 thereto.

6 **GEORGIA-PACIFIC'S ANGEL SOFT® BRAND AND ITS FEDERALLY**
7 **REGISTERED TRADEMARKS**

8 2. Georgia-Pacific is a Delaware limited partnership with its principal place of
9 business located at 133 Peachtree Street, N.E., Atlanta, Georgia 30303. We are one of the
10 world's leading manufacturers and marketers of tissue, towels, napkins, cups, plates, cutlery and
11 related tabletop items.

12 3. Georgia-Pacific owns the ANGEL SOFT® brand and family of trademarks used
13 in conjunction with bathroom tissue. Based upon company business records and reports, through
14 its predecessors-in-interest, Georgia-Pacific first developed and began using the ANGEL
15 SOFT® brand in connection with bathroom tissue in 1944. The picture shown in Figure 1 (and
16 Exhibit 1) of this declaration depicts the current product configuration and packaging of a typical
17 ANGEL SOFT® retail product.



22 **FIGURE 1**

23 4. Georgia-Pacific and its predecessors-in-interest have used the ANGEL SOFT®
24 marks for bathroom tissue continuously since 1944.

25 5. Georgia-Pacific also owns the ANGEL SOFT PS® mark for bathroom tissue that
26 it distributes through commercial channels. Georgia-Pacific first began using the ANGEL
27 SOFT PS® mark in commerce in conjunction with bathroom tissue at least as early as January
28

31, 2003. The picture shown in Figure 2 (and Exhibit 2) of this declaration depicts the current product configuration and packaging of a typical ANGEL SOFT PS® commercial product.



FIGURE 2

6. Georgia-Pacific has used the ANGEL SOFT PS® mark continuously since that 2003.

7. Georgia-Pacific owns several federally registered trademarks that protect its ANGEL SOFT® and ANGEL SOFT PS® brands of bathroom tissue: U.S. Registration Numbers 781,414; 1,172,215; 2,512,417; 2,912,982; 2,972,819; and 2,989,711. Georgia-Pacific also owns two additional Angel marks, U.S. Registration Numbers 2,546,897 and 2,841,759. True and correct copies of the federal registrations for these trademarks are attached as Exhibits 3 through 10. Hereinafter, I will collectively refer to Georgia-Pacific's ANGEL SOFT® and ANGEL SOFT PS® marks as the "ANGEL SOFT Trademarks."

8. Based upon widespread and continuous use, I am informed and believe that Registration Nos. 781,414 and 1,172,215 have achieved incontestable status.

SALES OF ANGEL SOFT® AND ANGEL SOFT PS® PRODUCTS

9. Since 1944, Georgia-Pacific has sold billions of dollars worth of bathroom tissue under the ANGEL SOFT Trademarks in the U.S., Canada and Mexico.

10. In particular, from 2004 through 2006, U.S. sales of bathroom tissue sold under the ANGEL SOFT Trademarks totaled over \$2 billion.

11. The U.S. is the largest market for bathroom tissue sold under the ANGEL SOFT Trademarks. Georgia-Pacific sells bathroom tissue under the ANGEL SOFT Trademarks in both the retail and commercial channels. For example, ANGEL SOFT® bathroom tissue is sold through the retail channel in large retail chain stores such as Wal*Mart, Target, Winn Dixie, and

1 Walgreen's as well as in tens of thousands independent retail stores located across the country.
 2 Georgia-Pacific sells its **ANGEL SOFT PS®** bathroom tissue in the commercial channel to
 3 distributors such as US Foodservice, SYSCO, Xpedx, and Lagasse Sweet who then distribute
 4 **ANGEL SOFT PS®** to well-known commercial end users such as Hampton Inn, Sheraton
 5 Hotels, The Walt Disney Company, Hyatt Hotels and Little Caesar Enterprises, Inc.

6 **ADVERTISING AND PUBLIC RECOGNITION OF ANGEL SOFT® BRAND AND**
 7 **TRADEMARKS**

8 12. Georgia-Pacific has invested significant expenses in advertising and promoting its
 9 **ANGEL SOFT®** brand and products for over six (6) decades. This advertising has consistently
 10 used the **ANGEL SOFT** Trademarks. In the U.S. in 2006 alone, Georgia-Pacific spent over \$22
 11 million in advertising and promoting bathroom tissue sold under the **ANGEL SOFT**
 12 Trademarks.

13 13. In the U.S., this advertising has consisted of television commercials, print
 14 publications, radio commercials, billboards, live promotions, sponsorship of large events, trade
 15 shows, brochures, and internet promotions—just to name a few. Exhibits 11 through 22
 16 exemplify the nature and scope of that advertising.

17 14. Further, Georgia-Pacific directed a portion of its advertising for the **ANGEL**
 18 **SOFT** Trademarks toward the Spanish-speaking market. Since 2005, Georgia-Pacific paid for
 19 both television and radio advertisements in markets, including but not limited to Los Angeles,
 20 Phoenix and Houston, along with other national advertisements in 2007.

21 15. This advertising and promotion has been continuous, and has also included
 22 numerous large-scale campaigns that have stood out for consumers. Some examples include the
 23 "Angels in Action" and "Bathroom Moments" campaigns, which received significant media
 24 attention and coverage.

25 16. Georgia-Pacific also created a website (www.angelsoft.com) to promote its
 26 **ANGEL SOFT** Trademarks and products. This website launched in 2003 and currently receives
 27 an average of 4,145 visitors per month. Exhibits 23 through 25 are copies of website pages from
 28 that website that promote the **ANGEL SOFT** Trademarks and products.

17. Georgia-Pacific also distributes point-of-sale items that promote the **ANGEL SOFT** Trademarks and products. Exhibits 26 and 27 represent photographs of exemplary point-of-sale items.

18. Through over sixty (60) years of advertising and promotion of the **ANGEL SOFT®** brand, and by virtue of millions of dollars in marketing and advertising expenditures, the **ANGEL SOFT®** brand has become well-known among consumers. According to AC Nielsen market share data for the 52 weeks ending September 08, 2007, the **ANGEL SOFT®** brand ranked second in total dollar sales. We believe that the **ANGEL SOFT** Trademarks serve to identify the **ANGEL SOFT®** brand and are extremely valuable to Georgia-Pacific.

**GEORGIA-PACIFIC'S QUALITY CONTROL EFFORTS TO MAINTAIN THE
HIGHEST QUALITY STANDARDS FOR ANGEL SOFT® PRODUCTS**

19. The products sold under the **ANGEL SOFT** Trademarks must meet Georgia-Pacific's rigorous standards of quality. As a result, Georgia-Pacific endures significant expense to ensure that its products sold under the **ANGEL SOFT** Trademarks adhere to high quality standards. Some examples of the quality control efforts in place by Georgia-Pacific include, but are not limited to, measuring and controlling the quality of the base sheet of the bathroom tissue during production; measuring and recording the finished bathroom tissue rolls at least once per day per manufacturing line; conducting periodic workmanship audits of the bathroom tissue itself as well as the packaging, box and pallet; and conducting softness panels to judge sensory softness.

**ACTUAL CONFUSION BETWEEN ANGEL SOFT® PRODUCTS AND DEFENDANTS'
UNAUTHORIZED "ANGEL" PRODUCTS**

20. On May 17, 2007, Georgia-Pacific received a letter from an anonymous consumer. A true and correct copy of that anonymous letter is attached as Exhibit 28. The letter stated that "Angel" products were being confused in the marketplace with Georgia-Pacific's **ANGEL SOFT®** products. The letter states that, "many people seemed to be misled by this infringed [sic] product thinking that the (G.P.) T.V. commercial has something to do with the toilet paper

EXHIBIT 2

United States Patent Office

781,414
Registered Dec. 8, 1964

PRINCIPAL REGISTER Trademark

Ser. No. 150,668, filed Aug. 7, 1962

ANGEL SOFT

Hudson Pulp & Paper Corp. (Maine corporation)
477 Madison Ave.
New York 22, N.Y., assignee of
Angel Soft Tissue Mills, Inc. (New York corporation)
New York, N.Y.

For: DISPOSABLE PAPER TISSUES, TOILET TISSUES, AND PAPER NAPKINS, in CLASS 37.
First use 1944; in commerce 1944.
No claim is made to "Soft" apart from the mark as shown.

EXHIBIT 3

Int. Cl.: 16

Prior U.S. Cl.: 37

United States Patent and Trademark Office

Reg. No. 1,172,215

Registered Oct. 6, 1981

TRADEMARK
Principal Register

ANGEL SOFT

Hudson Pulp & Paper Corp. (Maine corporation)
320 Post Rd.
Darien, Conn. 06820

For: DISPOSABLE PAPER TISSUES, BATH-
ROOM TISSUES, PAPER NAPKINS AND PA-
PER TOWELS, in CLASS 16 (U.S. Cl. 37).

First use 1944; in commerce 1944.

Owner of U.S. Reg. Nos. 770,925 and 781,414.

The word "Soft" is disclaimed apart from the
mark as shown without prejudice to applicant's
common law rights.

Ser. No. 227,133, filed Aug. 13, 1979.

HENRY S. ZAK, Primary Examiner

EXHIBIT 4

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,512,417

United States Patent and Trademark Office

Registered Nov. 27, 2001

**TRADEMARK
PRINCIPAL REGISTER**

**Angel
Soft**

GEORGIA-PACIFIC CORPORATION (GEORGIA
CORPORATION)
133 PEACHTREE STREET NE
ATLANTA, GA 30303

FOR: BATHROOM TISSUE, IN CLASS 16 (U.S.
CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 5-1-2000; IN COMMERCE 5-1-2000.

OWNER OF U.S. REG. NOS. 781,414, 1,172,215,
AND 1,917,281.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SOFT", APART FROM THE MARK
AS SHOWN.

SER. NO. 76-169,106, FILED 11-21-2000.

BERYL GARDNER, EXAMINING ATTORNEY

EXHIBIT 5

Colleen C. Smith
Direct Dial: +619.236.1234
colleen.smith@lw.com

600 West Broadway, Suite 1800
San Diego, California 92101-3375
Tel: +1.619.236.1234 Fax: +1.619.696.7419
www.lw.com

LATHAM & WATKINS LLP

January 15, 2008

VIA FEDERAL EXPRESS AND FAX

SUBJECT TO FED. R. EVID. 408

Ronald Martinetti
Law Offices of Kazanjian & Martinetti
520 East Wilson Avenue, Suite 250
Glendale, California 91206

FIRM / AFFILIATE OFFICES

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

File No. 038615-0003

Re: *Georgia-Pacific Consumer Products LP v. Lee's General Toys et al.*, S.D. Cal.
No. 07-CV-02391 JAH POR

Dear Mr. Martinetti:

As we discussed, Georgia-Pacific, is willing to entertain continued dialogue regarding potential resolution of this matter.

Georgia-Pacific wishes to stop the distribution of Angelite products once and for all. Accordingly, we request full disclosure from your clients regarding:

- the distribution network for the infringing Angelite products, including the names and addresses of any and all direct and indirect manufacturers, agents, suppliers, and customers that Lee's General Toys has used to obtain and distribute these products;
- the amount of current inventory of Angelite products of which your clients are aware, including that in possession of customers;
- financial records regarding the marketing and sale of Angelite products, including any invoices, customs records, and tax documents;
- detailed information regarding any anticipated future shipments of the Angelite-labeled products to the United States, including the anticipated location, date of delivery and expected quantity; and
- information regarding any pending or issued trademarks filed by your clients (state and federal) related to Angelite products.

LATHAM & WATKINS^{LLP}

I appreciate your professionalism, and I look forward to receiving these additional disclosures as soon as practicable.

Best regards,

/s/ Colleen C. Smith

Colleen C. Smith
of LATHAM & WATKINS LLP

EXHIBIT 6

Adam A. Welland
Direct Dial: (858) 523-3941
Adam.Welland@lw.com

12636 High Bluff Drive, Suite 400
San Diego, California 92130-2071
Tel: +1.858.523.5400 Fax: +1.858.523.5450
www.lw.com

LATHAM & WATKINS^{LLP}

January 22, 2008

VIA FACSIMILE AND FEDEX

Ronald Martinetti, Esq.
Law Offices of Kazanjian & Martinetti
520 East Wilson Avenue, Suite 250
Glendale, CA 91206

FIRM / AFFILIATE OFFICES

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

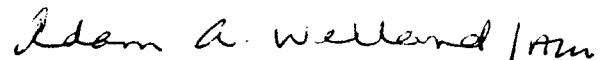
File No. 038615-0003

Re: Georgia-Pacific Consumer Products v. Lee's General Toys, etc.

Dear Mr. Martinetti:

We have received your various correspondence. We are still awaiting the disclosures requested last week in our January 15, 2008 letter, although the Hearing is now less than a week away. We truly believe that will be the best way to minimize costs to our respective clients.

Sincerely,



Adam A. Welland
of LATHAM & WATKINS LLP

EXHIBIT 7

Adam A. Welland
Direct Dial: +619.236.1234
Adam.Welland@lw.com

600 West Broadway, Suite 1800
San Diego, California 92101-3375
Tel: +1.619.236.1234 Fax: +1.619.696.7419
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES
Barcelona New Jersey
Brussels New York
Chicago Northern Virginia
Frankfurt Orange County
Hamburg Paris
Hong Kong San Diego
London San Francisco
Los Angeles Shanghai
Madrid Silicon Valley
Milan Singapore
Moscow Tokyo
Munich Washington, D.C.

File No. 038615-0003

January 28, 2008

VIA MAIL / EMAIL / FAX

SUBJECT TO FED. R. EVID. 408

Ronald Martinetti
Law Offices of Kazanjian & Martinetti
520 East Wilson Avenue, Suite 250
Glendale, California 91206

Re: *Georgia-Pacific Consumer Products LP v. Lee's General Toys et al.*, S.D. Cal.
No. 07-CV-02391 JAH POR

Dear Mr. Martinetti:

As we discussed after today's Hearing, Georgia-Pacific appreciates the disclosures received up to this point, but believes that they are incomplete and still requires additional information to permit a continued dialogue.

While our letter of January 15, 2008 contained these requests, they are re-iterated below with some additional detail. Please ensure that this information spans from the time your clients first began selling 'Angelite' bathroom tissue (at least as early as 2003, when both federal and state trademark applications were filed) through the present:

- the distribution network for the infringing Angelite products, including the names and addresses of any and all direct and indirect manufacturers, agents, suppliers, and customers that Lee's General Toys has used to obtain and distribute these products;
- the amount of current inventory of Angelite products of which your clients are aware, including that in possession of customers;
- financial records regarding the marketing and sale of Angelite products, including any invoices, customs records, and tax documents (which are discoverable in a federal court action such as this);
- detailed information regarding any anticipated future shipments of the Angelite-labeled products to the United States, including the anticipated location, date of delivery and expected quantity; and

Ronald Martinetti
January 28, 2008
Page 2

LATHAM & WATKINS^{LLP}

- information regarding any pending or issued trademarks filed by your clients (state and federal) related to Angelite products (including information about the individual(s) responsible for filing such applications)

Georgia-Pacific must receive the requested information by noon on Wednesday, or Georgia-Pacific will be forced to formally and promptly request expedited discovery from the Magistrate Judge.

Best regards,

/s/ Adam A. Welland

Adam A. Welland
of LATHAM & WATKINS LLP